



40 CFR Part 52

[EPA-R03-OAR-2020-0416; FRL-10021-12-Region 3]

Air Plan Approval; Pennsylvania; Regulatory Updates to Nonattainment New Source Review (NNSR) Permitting Requirements for 2012 PM_{2.5} National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania, on March 10, 2020. This revision pertains to the Pennsylvania Department of Environmental Protection Agency's (PADEP) amendments to 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources) to implement Federal nonattainment new source review (NNSR) provisions for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2020-0416 at <https://www.regulations.gov>, or via email to opila.marycate@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**For Further Information Contact**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Amy Johansen, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2156. Ms. Johansen can also be reached via electronic mail at johansen.amy@epa.gov.

SUPPLEMENTARY INFORMATION: On March 10, 2020, the Commonwealth of Pennsylvania formally submitted a SIP revision to the Pennsylvania SIP. This SIP submission amends PADEP’s 25 Pa. Code Chapters 121 (relating to general provisions) and 127, Subchapter E (relating to new source review). This proposed SIP revision establishes that emissions of volatile organic compounds (VOC) and ammonia are precursors to PM_{2.5} for new and modified major sources emitting PM_{2.5} in Pennsylvania nonattainment areas; establishes a significance level for PM_{2.5}; proposes emission offset ratios for emissions of VOC and ammonia as PM_{2.5} precursors; and amends relevant definitions. The relevant PADEP regulations were adopted by PADEP and became effective upon publication on December 21, 2019.

For more information related to EPA’s proposed approval of this SIP revision, please refer to EPA’s Technical Support Document (TSD), located in Docket ID No. EPA-R03-OAR-2020-0416 at <https://www.regulations.gov>.

I. Background

A. 2012 PM_{2.5} NAAQS

Airborne particulate matter with a nominal aerodynamic diameter of 2.5 micrometers or

less are “fine particles,” and are also known as PM_{2.5}. See 77 FR 44198 (July 27, 2012). Fine particles in the atmosphere are made up of a complex mixture of components, including sulfate, nitrate, ammonium, elemental carbon, organic compounds, and inorganic material. There are substantial health effects associated with exposure to PM_{2.5} emissions. Epidemiological studies have shown a significant correlation between elevated PM_{2.5} levels and premature mortality. Other important health effects associated with PM_{2.5} exposure include aggravation of respiratory and cardiovascular disease, lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children. See 70 FR 65984 (November 1, 2005).

EPA has revised the NAAQS for PM_{2.5} on multiple occasions, most recently in 2012. On December 14, 2012, the annual primary standard for PM_{2.5} was lowered from 15 micrograms per meter cubed (µg/m³) to 12 µg/m³. See 78 FR 3087 (January 15, 2013). The existing 24-hour standards (primary and secondary) were retained at 35 µg/m³, as was the annual secondary standard of 15 µg/m³. Upon promulgation of the 2012 PM_{2.5} NAAQS, EPA formally classified all of Delaware County and Lebanon County, Pennsylvania as moderate nonattainment for the 2012 annual PM_{2.5} standard. See 80 FR 2206 (January 15, 2015).¹

B. Purpose of SIP Revision

For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as “Nonattainment New Source Review.” See CAA section 172(c)(5).

PADEP’s SIP revision revises NNSR permit requirements for major sources of PM_{2.5}. Specifically, PADEP’s 25 Pa. Code Chapters 121 and 127 have been amended to implement additional provisions pertaining to PM_{2.5} precursors, as promulgated in EPA’s rule entitled Fine

¹ EPA subsequently issued Additional Air Quality Designations and Technical Amendment to Correct Inadvertent Error in Air Quality Designations for the 2012 Primary Annual Fine Particle (PM_{2.5}), which impacted Delaware and Lebanon counties. 80 FR 18535, 18549 (April 7, 2015).

Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (2016 Implementation Rule). 81 FR 58010 (August 24, 2016).

As required by EPA's 2016 Implementation Rule, which implements the D.C. Circuit court's January 2013 decision in *NRDC v. EPA*,² areas classified as nonattainment for any PM_{2.5} NAAQS are required to comply with the parts of CAA subpart 4 section 189(e)³ that require the control of major sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." The 2016 Implementation Rule amended the definitions of (1) "regulated NSR pollutant" with regard to PM_{2.5} precursors; (2) "major stationary source" with regard to major sources of direct PM_{2.5} emissions and PM_{2.5} precursors locating in PM_{2.5} nonattainment areas classified as moderate and serious; and (3) "significant" with regard to emissions of direct PM_{2.5} and its precursors.

C. EPA's Findings of Failure to Submit

On April 6, 2018, EPA issued its final Findings of Failure to Submit PM_{2.5} SIP revisions (Findings) to three states, including Pennsylvania. See 83 FR 14759. EPA's Findings apply to states with overdue SIP revisions for areas initially designated as nonattainment and classified as moderate for the 2012 PM_{2.5} NAAQS on April 15, 2015, which included both Delaware and Lebanon County, Pennsylvania. In its Findings, EPA found that Pennsylvania failed to submit a timely revision to their SIP as required to satisfy CAA requirements for implementation of the 2012 PM_{2.5} NAAQS for those counties.

Specific to this rulemaking is PADEP's remedying its previous failure to submit revisions to its NNSR requirements related to the 2012 PM_{2.5} NAAQS. PADEP was required to submit its NNSR SIP revision to EPA for approval by October 15, 2016. See 83 FR 14759 (April 6, 2018). PADEP did not meet this deadline, hence EPA's issuance of its April 6, 2018 Findings, which

² 706 F.3d 428 (D.C. Cir. 2013).

³ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

became effective as of May 7, 2018. As a result of EPA's Findings, PADEP was given 18 months after the effective date of EPA's Findings to submit all applicable moderate area requirements or the imposition of sanctions would occur for the affected moderate 2012 PM_{2.5} nonattainment area, the Delaware County and Lebanon County, Pennsylvania nonattainment areas.⁴ This proposed SIP revision updates PADEP's regulations to include the required PM_{2.5} NNSR provisions in response to EPA's 2016 Implementation Rule requirements. See 81 FR 58010 (August 24, 2016) and 40 CFR 51.165.

As a result of EPA's Findings, Pennsylvania was required to either submit and obtain EPA approval of redesignation requests for the 2012 PM_{2.5} standard, or to submit a complete SIP submission addressing PM_{2.5} precursors under NNSR. These rulemaking actions were required to be submitted to EPA by November 7, 2019 to avoid mandatory sanctions under CAA section 179. After it issued its Findings, EPA subsequently redesignated both Lebanon and Delaware County, Pennsylvania to attainment for the 2012 PM_{2.5} NAAQS, which became effective on October 30, 2019. 84 FR 51420 (September 30, 2019, effective on October 30, 2019). As stated in our redesignation document, EPA's redesignation nullified the failure to submit findings and stopped the sanctions clock.

However, in addition to PADEP submitting redesignation requests (now approved by EPA), it also drafted regulatory provisions in response to EPA's Final 2016 Implementation Rule, as it relates to NNSR.⁵ On March 10, 2020, PADEP submitted those regulatory changes to EPA for approval into the Pennsylvania SIP.

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

PADEP's Environmental Quality Board (EQB) adopted changes to 25 Pa. Code Chapters 121 and 127 and those changes became effective upon publication in the Pennsylvania Bulletin

⁴ Because EPA's April 6, 2018 Findings became effective on May 7, 2018, the 18-month sanctions clock for PADEP to submit its NNSR SIP revision ended on November 7, 2019.

⁵ See 84 FR 51420 (September 30, 2019, effective on October 30, 2019).

on December 21, 2019. PADEP submitted those changes as a SIP revision to EPA for inclusion in the Pennsylvania SIP on March 10, 2020, via the EPA State Planning electronic Collaboration System (SPeCS).

For areas designated as nonattainment for one or more NAAQS, the SIP must include preconstruction permit requirements for new or modified major stationary sources of such nonattainment pollutant(s), commonly referred to as NNSR. CAA 172(c)(5). PADEP's 25 Pa. Code Chapters 121 and 127 address NNSR permit requirements for major sources of PM_{2.5}, as amended, to implement additional provisions pertaining to precursors, as promulgated in EPA's final 2016 Implementation Rule.⁶

B. EPA's Analysis

For additional information related to EPA's analysis of revisions to 25 Pa. Code, please refer to Section 6 of EPA's TSD, located in Docket ID No. EPA-R03-OAR-2020-0416 at <https://www.regulations.gov>.

Under EPA's 2016 Implementation Rule, which in part implements the D.C. Circuit Court's January 2013 decision in NRDC v. EPA,⁷ areas classified as nonattainment for any PM_{2.5} NAAQS are required to comply with the parts of CAA subpart 4 section 189(e)⁸ that require the control of major stationary sources of PM₁₀ precursors (and hence under the court decision, PM_{2.5} precursors) "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." As mentioned previously, the 2016 Implementation Rule amended the definitions of (1) "regulated NSR pollutant" with regard to PM_{2.5} precursors; (2) "major stationary source" with regard to major sources of direct PM_{2.5} emissions and PM_{2.5} precursors locating in PM_{2.5} nonattainment areas classified as moderate and serious; and (3) "significant" with regard to emissions of direct PM_{2.5} and its precursors. 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction,

⁶ See 81 FR 58010 (August 24, 2016).

⁷ 706 F.3d 428 (D.C. Cir. 2013).

⁸ This requirement was codified in 40 CFR 51.165(a)(13). See 81 FR 58010 (August 24, 2016).

Modification, Reactivation and Operation of Sources); specifically, Subchapter E (related to new source review) are subject to these new regulatory requirements. Delaware County and Lebanon County, Pennsylvania were classified as moderate nonattainment areas for the 2012 PM_{2.5} NAAQS.⁹ The major source permitting threshold for a moderate PM_{2.5} nonattainment area is 100 tons per year (tpy) of direct PM_{2.5} or any PM_{2.5} precursor, and 70 tpy for a serious PM_{2.5} nonattainment area.¹⁰

As more fully discussed in Section 6 of the TSD for this proposed approval, EPA evaluated the revised portions of 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources); specifically, Sections 121.1 (Definitions) and Subchapter E (related to new source review) 127.202, 127.203(a), and 127.210(a) (relating to Effective date, Facilities subject to special permit requirements, and Offset ratios, respectively) to determine if the revisions meet current applicable requirements for a PM_{2.5} NNSR permit program. 25 Pa. Code 121.1 - (1) contains revisions to clarify that 25 Pa. Code applies to major polluting facilities that will emit PM_{2.5} or its precursors in areas designated as nonattainment for PM_{2.5}; (2) the definition of “major facility” has been updated to include a 70 tpy emissions threshold for PM_{2.5} and all precursors to PM_{2.5} in a serious nonattainment area; (3) the definition of “regulated NSR pollutant” has been updated to include sulfur dioxide (SO₂), VOC, and ammonia in all PM_{2.5} nonattainment areas; (4) revisions were made to the definition of “significant” to include emission rates for PM_{2.5} at 10 tpy and emission rates for PM_{2.5} precursors as follows: 40 tpy of SO₂, 40 tpy of VOC, 40 tpy of ammonia, and 40 tpy of nitrogen oxides (NO_x). EPA finds these revisions approvable. Section 127.202(a) – Effective date, was amended to establish that emission of VOC and ammonia will be regulated as PM_{2.5} precursors after the effective date of the adoption of the proposed rulemaking. The

⁹ On January 15, 2015, EPA designated all of Delaware County and Lebanon County as moderate nonattainment for the 2012 annual PM_{2.5} standard. See 80 FR 2206 (January 15, 2015).

¹⁰ While Delaware County and Lebanon County were not classified as serious nonattainment areas for the PM_{2.5} NAAQS, PADEP has revised 25 Pa. Code to include the lower emissions threshold of 70 tpy for direct PM_{2.5} and all four PM_{2.5} precursors.

proposed amendments to 25 Pa. Code Chapters 121 and 127, became effective December 21, 2019. Section 127.203(a) – Facilities subject to special permit requirements, was amended to add “significant air quality impact” levels for PM_{2.5} at 0.2µg/m³ for the annual averaging time and 1.2 µg/m³ for the 24-hour averaging time. PADEP’s annual averaging time is more stringent than what EPA requires in 40 CFR 51.165(b)(2), therefore, EPA finds this more stringent requirement approvable. Section 127.210(a) – Offset ratios, establishes offset ratios for VOC and ammonia at a ratio of 1:1 for flue emissions and fugitive emissions. EPA finds the addition of offset ratios to be approvable.

III. Proposed Action

EPA’s review of this material indicates that PADEP’s March 10, 2020 SIP submittal is approvable and meets the requirements of 40 CFR 51.165 and are in accordance with CAA section 110. EPA is proposing to approve the March 10, 2020 submittal, which included revisions to 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources), as a revision to the Pennsylvania SIP. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference certain subsections of 25 Pa. Code Chapters 121 (General Provisions) and 127 (Construction, Modification, Reactivation and Operation of Sources) as identified and discussed in Section II of this preamble.

EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **For Further Information Contact** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because it is not a significant regulatory action under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking, pertaining to Pennsylvania's NNSR requirements under the 2012 PM_{2.5} NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 3, 2021

Diana Esher
Acting Regional Administrator
Region III

[FR Doc. 2021-04824 Filed: 3/8/2021 8:45 am; Publication Date: 3/9/2021]